



# AFTRA Retirement Fund

## Procedures for Determining the Qualified Status of Domestic Relations Orders

January 2012

### I. Introduction

These Procedures for Determining the Qualified Status of Domestic Relations Orders (the "Procedures") describe how domestic relations orders submitted to the AFTRA Retirement Fund (the "Fund") are processed and how the Fund determines whether such orders constitute "qualified domestic relations orders" or "QDROs," as set forth in Section 206(d)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and Section 414(p) of the Internal Revenue Code (the "Code"). These Procedures amend and replace the Fund's prior Procedures for Determining the Qualified Status of Domestic Relations Orders.

The Procedures should be read in conjunction with the Fund's Plan document (the "Plan"), a copy of which is available from the Fund Office. If the Procedures conflict in any way with the Plan, ERISA or the Code, the Plan, ERISA and the Code shall supersede these Procedures. The Fund is required to honor QDROs, as described in these Procedures, ERISA and the Code.

The Fund is not required to honor any domestic relations order or other document that does not constitute a QDRO. In order to constitute a QDRO, the DRO must, at minimum, satisfy the following requirements:

- The DRO must be made pursuant to a state domestic relations law (including a community property law);
- The DRO must create or recognize an Alternate Payee's right to (or assign to an Alternate Payee the right to) receive all or a portion of the Participant's Fund

benefits;

- The DRO must clearly specify:
  - The name of the Participant and Alternate Payee, and include the mailing address of the Participant and Alternate Payee in the order or in a separate document;
  - The amount or percentage of the benefits to be paid by the Fund to each Alternate Payee (or the manner in which the amount or percentage is to be determined);
  - The number of payments or the period to which the order applies; and
  - The name of the Plan to which the order relates;
  
- The DRO must not require the Fund to provide:
  - Any form of benefit option not otherwise available under the Plan;
  - Actuarially increased benefits; or
  - Benefits to an Alternate Payee which are to be paid to another Alternate Payee under a separate order previously determined to be a QDRO.

The Fund is also not required to honor any document that is not provided to the Fund, including a document provided to an affiliated fund or entity, such as the AFTRA Health Fund or AFTRA. The Fund is not required to modify or reverse any payment, transaction, or application of funds that occurs prior to the Fund's receipt of any document purporting to be a QDRO, and shall not be liable for any such payment, transaction or

application of funds. Further, the Fund is not required to honor any document that does not comply with the Plan.

## II. Terms

*Trustees.* The term Trustees shall mean the Trustees of the Fund, who have the full and exclusive power, in their sole and absolute discretion, to construe the provisions of these Procedures and the Plan, and any construction adopted by or decision made by the Trustees under these Procedures in good faith shall be binding. The Trustees may delegate their responsibilities and authority hereunder.

*Domestic Relations Order.* A domestic relations order, or “DRO,” is, as defined in Section 206(d)(3)(B)(ii) of ERISA and Section 414(p)(1)(B) of the Code, any judgment, decree, or order (including approval of a property settlement agreement and a notice or order from a governmental child support enforcement agency) that relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a Participant, and is made pursuant to a State domestic relations law (including a community property law).

*Qualified Domestic Relations Order.* The term “qualified domestic relations order” or “QDRO” means, as defined under Section 206(d)(3)(B)(i) of ERISA and Section 414(p)(1)(A), a DRO that (1) creates or recognizes the existence of an Alternate Payee’s right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to a Participant under a pension plan, and (2) meets statutory and other requirements set out herein.

*Proposed DRO.* The term “proposed DRO” means a draft DRO, which has not been issued or entered by a court or other authorized body. A “proposed DRO” is not a “DRO,” and the rules governing the Fund’s processing of proposed DROs are separately described in Part IV of these Procedures.

*Alternate Payee.* An Alternate Payee may be, as set forth in Section 206(d)(3)(K) of ERISA and Section 414(p)(8) of the Code, a spouse, former spouse, child or other dependent of a Participant who is recognized by a QDRO as having a right to receive all, or a portion of, the benefits payable under a plan with respect to the Participant. The Fund may also distribute benefits to a contingent alternate payee or payees if the QDRO provides for distribution to such contingent alternate payee(s), such contingent alternate payee(s) constitute an “alternate payee” as defined under ERISA and the Code and all required identifying information is provided to the Fund regarding such contingent alternate payee(s).

Terms used, but not otherwise defined, in these Procedures shall have the same meaning as those terms in the Plan, ERISA and the Code.

### III. Types of QDROs

***Shared Payment.*** The “Shared Payment” approach must be used when a QDRO is issued after a Participant has commenced benefits under the Fund. This approach may also be used when a QDRO is issued before a Participant has commenced benefits under the Fund.

Under this type of QDRO (also known as a stream of payments QDRO), the actual benefit payment payable to the Participant is split, and the Alternate Payee receives part or all of each payment. The QDRO must specify the portion of each payment to be made to the Alternate Payee and when the payments will commence and end.

Under this approach, the Alternate Payee will not receive a payment unless the Participant is entitled to a payment. Assuming the Participant survives to his benefit commencement date, and payments commence to be paid to the Participant and the Alternate Payee under the QDRO, payments to the Alternate Payee will generally end upon the earlier of the death of the Participant or the death of the Alternate Payee.

If the Participant predeceases the Alternate Payee before or after the Participant's benefit commencement date, under a Shared Payment order, no benefits will be payable to the Alternate Payee unless (1) the Alternate Payee is the Participant's surviving spouse under ERISA, the Code and the terms of the Plan, or was designated as such under the QDRO, in which case the Alternate Payee shall receive the qualified preretirement or postretirement joint and survivor benefit under the Plan (or such portion thereof awarded under the QDRO) upon the death of the Participant; or (2) the Participant designated the Alternate Payee to be his beneficiary under the terms of the Plan for any benefits payable to the Participant's beneficiary upon death of the Participant, in which case such benefits shall be paid to the Alternate Payee upon the death of the Participant in accordance with the terms of the Plan.

If the Alternate Payee predeceases the Participant before or after the Alternate Payee's benefits under the QDRO commence, then the Alternate Payee's share of the benefits will generally revert to the Participant. The Alternate Payee may not designate a beneficiary for the portion of the Participant's benefit allocated to the Alternate Payee under the QDRO in the event the Alternate Payee predeceases the Participant, however, the QDRO may name one or more contingent alternate payees.

***Separate Interest.* The Separate Interest form of QDRO may only be used if the DRO is issued before the Participant commences benefit payments under the Fund.**

Under this type of QDRO, the actuarially equivalent value of a portion of the Participant's Fund benefit is payable to one or more Alternate Payee(s). Each Alternate Payee has a separate right to receive his or her portion of the Participant's Fund benefit, at a time and in a form chosen by the Alternate Payee, rather than at the time and in the form chosen by the Participant. The Separate Interest QDRO cannot be used if the Participant's benefit has already commenced. The DRO must specify the portion of the Participant's accrued benefit as of a determination date to be allocated to the Alternate Payee and when the payments may begin. The DRO may permit the Alternate Payee to elect to commence receiving benefits at any time after the Participant attains "earliest

retirement age” as defined under Section 206(d)(3)(E) of ERISA and Section 414(p)(4) of the Code.

Under this approach, the Alternate Payee elects to commence the Alternate Payee’s benefit, the Alternate Payee may designate a beneficiary if the Alternate Payee elects a payment form that provides benefits to beneficiaries after the Alternate Payee’s death under the terms of the Plan, or the QDRO may provide for the Alternate Payee’s share to be paid to a contingent alternate payee(s) in the event the Alternate Payee predeceases the Participant before the Alternate Payee’s benefits have commenced. The Alternate Payee may not elect to have benefits paid in the form of a joint and survivor benefit with a subsequent spouse as the designated beneficiary. The QDRO should indicate whether the Alternate Payee is to be treated as a surviving spouse for purposes of the preretirement surviving spouse benefit and/or the post-retirement surviving spouse benefit and, if so, for what portion of that benefit.

#### **IV. Proposed DROs**

The parties are encouraged to submit a proposed DRO to the Fund before submitting it to court to be entered as a DRO. If the parties submit to the Fund a DRO that has already been entered by a court, and the Fund identifies changes that are required in order for the DRO to be a QDRO, the parties may be required to submit an amended DRO to the court to be entered. A proposed DRO will be treated as a “notice of a DRO” as explained in Part V below.

The Fund will advise whether a proposed DRO submitted by a party or a legal representative would be a QDRO if submitted to the Fund as an actual DRO, and if any changes should be made. In reviewing the proposed DRO, the Trustees or their delegee may consult with Fund counsel or other advisors. The Trustees or their delegee will evaluate whether the proposed DRO would be qualified pursuant to the Plan, ERISA, the Code and the Fund’s “QDRO Guidelines,” attached hereto.

The parties must submit a copy of a DRO for final approval after it has been entered by the court. The copy provided to the Fund should bear an original court stamp. If not provided, the Fund may require a copy with an original court stamp.

## **V. Receipt of DRO or Notice of a DRO, and Effect on Account and Payments**

The Fund applies different rules depending on whether it receives notice of a DRO (including a proposed DRO) or a court-entered DRO. These rules do not apply to receipt of non-written communications, and oral communications are insufficient to trigger any action by the Fund, other than a request for these Procedures.

“Notice of a DRO” shall mean receipt by the Fund of a proposed DRO, or receipt of a written document that states that the parties intend to obtain a QDRO, or any other written document that explicitly states that the parties intend to obtain a judgment, decree or order that creates or recognizes the existence of an Alternate Payee’s right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable with respect to the Participant from the Fund.

- A. *Receipt of Notice of DRO* – Upon receipt of notice of a DRO, the Fund will take the following steps:
  - 1. *Acknowledgment to Affected Parties* – The Fund will acknowledge receipt of notice of a DRO to the Participant and all Alternate Payees identified in the notice (or their legal counsel). The acknowledgment will be in writing and consist of:
    - (a) a letter acknowledging when the notice was received, and an explanation of the hold described below that will be placed on the Participant’s benefit, if applicable;

- (b) a copy of the notice of a DRO received by the Fund; and
- (c) a copy of these Procedures for processing DROs, along with the Fund's Model QDRO.

2. *Hold on Account* – Starting as soon as administratively feasible after receipt of notice of a DRO, and continuing for ninety (90) days thereafter, the Fund will place a hold on the full amount of the Participant's benefit and/or the distribution of the Participant's benefit. The parties may agree in writing to the Fund for the Fund to place a hold on a different amount. The hold may be extended beyond ninety days on written consent of the parties provided to the Fund. The Fund may unilaterally extend the ninety-day hold for an additional thirty (30) days, if necessary, on notice to all parties. If a DRO is not entered and received by the Fund within the ninety (90) days, or such extended period, the Fund will treat the notice of a DRO as not having been received and will pay any benefits as if no notice had been received. If at any time thereafter the Fund receives a DRO, the rules set out below in subsection B and Part VI shall apply.

B. *Receipt of DRO* – Upon receipt of a DRO, the Fund will take the following steps:

- 1. *Acknowledgment to Affected Parties* – The Fund will acknowledge receipt of the DRO to the Participant and all Alternate Payees identified in the DRO (or their legal counsel). The acknowledgment will be in writing and consist of:
  - (a) a letter acknowledging when the DRO was received and the status of the Participant's benefit entitlement during the review of the DRO including whether benefits will be segregated as discussed

below;

- (b) a copy of the DRO; and
- (c) a copy of these Procedures for processing DROs, including the Model QDRO, unless previously sent.

2. *Segregating Accounts* – If the Participant is in pay status when the DRO is received by the Fund, or the Participant elects to commence benefits while the qualified status of the DRO is being determined, the Fund will, as soon as administratively feasible after receipt of the DRO, separately account for the amount that would be payable to the Alternate Payee(s) during such period, if such amount can be determined by the Fund from the DRO. The Fund shall continue to account separately for such amounts until the earlier of the date the Fund determines whether the DRO is qualified or the expiration of eighteen (18) months from the date the first payment would have been due had the DRO been a QDRO. If the DRO is determined to be a QDRO, upon the Alternate Payee’s filing of an application for benefits in accordance with the requirements of the Plan, and becoming eligible for such benefits, any amounts that have been separately accounted by the Fund for the Alternate Payee will be paid to the Alternate Payee. If, within eighteen (18) months, the DRO is determined not to be a QDRO or no such determination is made, for any reason, any amounts held separately with respect to any Alternate Payee will be forwarded to the Participant as if there had been no DRO.

## **VI. Determination of Qualification**

The Fund will evaluate a DRO or proposed DRO to determine if it is (or, upon court entry, may be deemed to be) a QDRO as follows:

- A. *Process of Determination* – In making the determination, the Trustees or their delegatee may consult with Fund counsel or other advisors. The Trustees or their delegatee will evaluate whether the proposed DRO would be qualified pursuant to the Plan, ERISA, the Code and these Procedures.
- B. *Determination Letter* – The parties’ designated legal representatives, if any, or, if no such designation has been made, the Participant, all Alternate Payees or any counsel for these parties of which the Fund has notice, will receive a copy of the Determination Letter, which shall consist of the following:
1. If the Fund determines that the DRO is a QDRO, the letter may outline the Fund’s understanding of the DRO as to its provisions and effect. The determination may state the principal interpretations or assumptions of the Fund and how they pertain to the QDRO. The determination will also state that if the parties disagree with the Fund’s understanding and interpretation of the DRO’s provisions and effect, they may have the QDRO amended to conform with their intent or contact the Fund to resolve any disagreement, and if such disagreement cannot be resolved, they may appeal the determination to the Trustees.
  2. If the DRO is found to be deficient, the notice will state in what respect the DRO is deficient, and how it may be amended to qualify under the law and the Plan. The letter will also state that if the parties disagree with the determination of the Fund as to the failure of the DRO to qualify, they may appeal the determination to the Trustees, or they may have the DRO amended to conform with the Plan’s requirements.
- C. *Failure to Make Determination* – If a final determination is not made within eighteen (18) months from the receipt of the original DRO by the Fund office,

any amounts held separately with respect to any Alternate Payee will be forwarded to the Participant as though there had been no DRO. A determination that a DRO is a QDRO after the close of the eighteen (18)-month period will be applied prospectively only.

## **VII. Effect of Determination of Qualified Status of Order**

*Alternate Payee as Beneficiary* – Upon a determination that a DRO is a QDRO, any Alternate Payee(s) named in the QDRO will be treated as a beneficiary of the Fund for all purposes, including ERISA’s disclosure requirements, except PBGC premiums.

*Taxation* – Under the Internal Revenue Code, if an Alternate Payee is a spouse or former spouse of the Participant, payments are subject to taxation to the Alternate Payee. If the payment is made pursuant to a QDRO for child support or if the Alternate Payee is the child or dependent of the Participant, payments are subject to taxation to the Participant.

*Paying Benefits Under a Separate Interest QDRO* – For a separate interest QDRO, the Alternate Payee must apply for benefits at the time and in the manner prescribed in the Plan and the QDRO. In such cases, the Fund will provide the Alternate Payee with a description of the available benefit form options at the time of the Alternate Payee’s application.

## **VIII. Miscellaneous**

*Model QDRO* -- The Fund has developed a model QDRO, which is provided as a sample to the parties of an acceptable DRO. Participants and Alternate Payees are not required to use the model QDRO, and the Fund’s provision of the model QDRO is not and shall not be construed to be the provision of legal, financial or other advice to the parties.

*QDRO Limitations* – The QDRO cannot require that the Fund be required to (a) provide any type or form of benefit, or any option, not otherwise provided under the Plan; (b) provide increased benefits (determined on the basis of actuarial value); or (c) pay benefits to an Alternate Payee which are required to be paid to another Alternate Payee under another order previously determined to be a QDRO. Language concerning these limitations should be included in the QDRO.

*Payment Error* – In the event that the Fund inadvertently pays to Participant any benefits that are assigned to Alternate Payee pursuant to the terms of the order, the Participant shall immediately reimburse Alternate Payee to the extent that Participant has received such benefit payments, and shall forthwith pay such amounts so received directly to the Alternate Payee within ten (10) days of receipt. In the event that Fund inadvertently pays to Alternate Payee any benefits that are assigned to Participant pursuant to the terms of the order, Alternate Payee shall immediately reimburse Participant to the extent that Alternate Payee has received such benefit payments, and shall forthwith pay such amounts so received directly to Participant within ten (10) days of receipt. If either party receives a payment in error that is not due the other party, the erroneous payment shall be returned to the Fund within ten (10) days of receipt or notice.

*Changes to QDRO* – Each party to the QDRO, and counsel, must advise the Trustees of any change in his or her contact or identifying information. Any changes to the benefits payable must be effectuated through a subsequent DRO (see Subsequent DRO, below).

*Timing of DRO* – The Fund shall not determine that a DRO is not a QDRO solely because of the time it is issued. For instance, the Fund shall not determine that a DRO is not a QDRO solely because the Participant has died, or because the Participant and Alternate Payee have already divorced. However, if the Participant dies, and the Fund has not received written notice of a DRO or a DRO, and the time limits for processing a notice of

a DRO or DRO explained in Part V above have elapsed, it shall pay any benefits without regard for any DRO that may exist and shall not be liable for any such payments.

*Subsequent DRO* – If, after a DRO has been received by the Fund (either before or after it is determined to be qualified), a new DRO with respect to the same parties is received modifying the earlier DRO, the second DRO shall supersede the first DRO. If the first DRO has been determined to be a QDRO, the second DRO will have only prospective effect upon its qualification. The ability of a subsequent DRO to modify an earlier DRO may be limited once either party enters pay status.

*Legal Representatives* – The Participant and any Alternate Payee may designate (in writing to the Fund) a representative for receipt of copies of any documents that are sent to them pursuant to these Procedures. If so designated, copies of documents will be sent to the legal representatives, and all future correspondence under these Procedures will be directed to the legal representatives. If there is no such designation but the Fund is aware of a legal representative of record, correspondence will be sent to the Participant and Alternate Payee, with a copy to the legal representative(s).

*Additional Information* – The Trustees or their delegate may request the Participant and/or the Alternate Payee(s) to furnish any documents and information the Trustees or their delegate in their sole discretion deem necessary.

*Contact information* – If no address is given in the DRO for mailing of any document sent under these Procedures, the Fund shall mail it to the last known addresses of the Participant and the Alternate Payee(s).

*Modification to QDRO Procedures* – The Trustees have the right to amend or modify these Procedures without notice to any party. No amendment or modification, unless required by law or applicable regulation, will cause a DRO previously determined to be a QDRO to fail to retain its qualification.

*Disclaimer* – In all cases, the terms of the Plan shall determine any party’s eligibility for benefits and the amount of such benefits. The benefits payable are governed by the Plan, which is subject to change or termination at any time. All benefit payments are subject to the actual terms and conditions of the Plan in effect when a party applies for benefits.

Adopted by the Board of Trustees

January 31, 2012